IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.15 OF 2006

IN

SUMMARY SUIT NO.2770 OF 2005

Rajat Anil Agarwal. ...Plaintiff.

vs.

M/s.Sarda Cloth Collection & Another. ...Defendants.

Mr.Hemang Mehta i/b. Mehta & Co., for Plaintiff.

Mr.R.D.Soni i/b. M/s.Ram & Co., for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 26th June, 2006.

P.C.:-

1. The plaintiff has filed the suit for recovery of the amount relying on two documents, a copy of one document is at Exhibit A to the plaint, whereby the defendants acknowledged the receipt of the amount by demand draft and promises to repay the amount with interest at 12% per annum. A copy of the second document is at Exhibit B by which the defendants acknowledged receipt of the

amount by demand draft and promises to repay the amount with interest at 12% per annum. As the amount was not repaid, the plaintiff issued demand notice. There is no reply to the demand notice. The defence put up in the affidavit filed by the defendants is that the father of the plaintiff is a business man who carries on business. A private limited company run by the partners of defendant no.1 firm owed amounts to the father of the plaintiff. As that company was in difficulty and was declared as sick company, father of the plaintiff wanted the defendant no.1 firm to take over the debt owed by the private limited company to the father of the plaintiff and for that purpose he issued two demand drafts. According to the defendant, after depositing that demand drafts in the bank, the defendant withdrew the amount of Rs.10,00,000/- by cash and paid it over to the father of the plaintiff. A demand draft was of Rs.4,95,000/-, it was taken out in favour of one of the sister concerns of the plaintiff's father at the instance of the plaintiff and the amount was paid to that concern.

2. According to the plaintiff, the case put up by the defendants is unbelievable. According to the plaintiff, if the debt was owed by the private limited company to the father of the plaintiff then to a transaction whereby that debt was taken over by defendant no.1, the father of the plaintiff must be a party. Admittedly, the demand drafts, on which the present suit is based, were given by the plaintiff

and not by that Private Ltd. Company. It is further submitted that, according to the defendants, Rs.10,00,000/- were withdrawn from the bank in cash and were paid over to the father of the plaintiff, but there is no document produced showing that such payment was made. So far as the demand draft of Rs.4,95,000/- issued in favour of one of the concerns of the father of the plaintiff is concerned, according to the plaintiff, his father has filed affidavit showing that the demand draft was given by the defendants to the concern of the plaintiff's father in an independent transaction of sale of goods between that concern and defendant no.1. There is no further affidavit filed by the defendants disputing the statements made in the affidavit filed by the father of the plaintiff. The learned Counsel appearing for defendants, on the other hand, submits that the plaintiff is a student therefore, his father has entered into the transactions. According to the learned Counsel, the fact that the entire amount of Rs.15,00,000/- (Rupees Fifteen lakhs only) which was received by the defendants on realisation of the bank demand drafts was either withdrawn on the same date or used for issuing bank draft in favour of the concern of the plaintiff's father, substantiates the defence of the defendant. I also find that the case that has been put up by the defendants is difficult to believe. If the debt owed by a private limited company to the father of the plaintiff was to be taken over by the defendant no.1 firm, it would be necessary for the three parties to be involved to execute a document, as a result of

which the debt owned by the private limited company would be taken over by the defendant no.1 firm. No such document is even alleged to have been executed by any of the parties. Without execution of such a document, the debt owed by a Private Limited Company to the father of the plaintiff cannot be said to have been taken over by defendant no.1 by a transaction whereby son of the person whom the debt is owed, advances Rs.15,00,000/- to defendant no.1. In the absence of execution of any document between a private limited company, defendant no.1 and the father of the plaintiff, neither the liability of the private limited company to the father of the plaintiff could be wiped out nor the liability could be created in defendant no.1 towards the father of the plaintiff. The suit transaction would really result in creating additional liability in the defendant no.1 towards the plaintiff and not wiping out the liability of the private limited company towards the father of the plaintiff. The case of the defendants, that the amount of Rs.15,00,000/- was repaid on the same date, also cannot be believed. Even, according to the defendants, Rs.10,00,000/- were paid by cash to the father of the plaintiff, but there is no document executed by the father of the plaintiff acknowledging the receipt of the amount. On the same date Rs.4,95,000/- were said to have been paid by a draft to one of the sister concerns of the plaintiff's father, it is nowhere explained if for repayment of Rs.4,95,000/- it was necessary to take out demand draft then why for repayment of Rs.10,00,000/- demand draft

was not taken out. The father of the plaintiff has filed the affidavit stating that the amount of Rs.4,95,000/- was paid to one of his concerns in an independent transaction between the defendant no.1 and that concern. There is no further affidavit filed by the defendants disputing this statement. Taking overall view of the matter therefore, it appears that incredible defence has been put up by the defendants just because the defendants are not in a position to pay the amount. The defence put up by the defendants has no substance. Therefore, the defendants are not entitled to any leave to defend the suit. The summons for judgment is disposed of. As the defendants are not entitled to any leave to defend the suit, the suit of the plaintiff has to be decreed It is accordingly, decreed in terms of prayer clause (a). Refund of Court fees as per rules.